

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Environmental Services Department
AGENDA DATE: CCA Introduction 1/19/10; Public Hearing 1/26/10
CONTACT PERSON/PHONE: Ellen Smyth, 621-6719
DISTRICT(S) AFFECTED: Citywide

SUBJECT: ORDINANCE

AN ORDINANCE AMENDING TITLE 9 (HEALTH AND SAFETY), CHAPTER 9.48 (PUBLIC SWIMMING POOLS AND SPAS) TO DELETE REFERENCES TO BACTERIOLOGICAL WATER SAMPLING; TO CLARIFY SIGNAGE IN SECTION 9.48.130; TO CLARIFY VIOLATION CATEGORIES IN SECTION 9.48.150; TO CLARIFY SUSPENSION CRITERIA IN SECTION 9.48.250; TO ADD REVOCATION AND APPEAL LANGUAGE IN SECTIONS 9.48.255 AND 9.48.270, RESPECTIVELY; THE PENALTY AS PROVIDED IN SECTION 9.48.260 OF THE EL PASO CITY CODE.

BACKGROUND / DISCUSSION:

The Environmental Services Department is requesting an ordinance be revised to update administrative language and clarify violation categories relating to public swimming pools and spas. These functions were previously part of the El Paso City-County Health & Environmental District. During the past year, we have reviewed the ordinances and procedures for this function and propose the following recommendations.

PRIOR COUNCIL ACTION: N/A

AMOUNT AND SOURCE OF FUNDING: N/A

BOARD / COMMISSION ACTION: N/A

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____

(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA: _____

CITY MANAGER: _____ **DATE:** _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 9 (HEALTH AND SAFETY), CHAPTER 9.48 (PUBLIC SWIMMING POOLS AND SPAS) TO DELETE REFERENCES TO BACTERIOLOGICAL WATER SAMPLING; TO CLARIFY SIGNAGE IN SECTION 9.48.130; TO CLARIFY VIOLATION CATEGORIES IN SECTION 9.48.150; TO CLARIFY SUSPENSION CRITERIA IN SECTION 9.48.250; TO ADD REVOCATION AND APPEAL LANGUAGE IN SECTIONS 9.48.255 AND 9.48.270, RESPECTIVELY; THE PENALTY AS PROVIDED IN SECTION 9.48.260 OF THE EL PASO CITY CODE.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

Section 1. That all references in Title 9 (Health and Safety), Chapter 9.48 (Public Swimming Pools and Spas) of the El Paso City Code to the term Chapter 2655 or Chapter 265 along with a section or subsection number to Title 25 of the Texas Administrative Code or to Title 25 of the T.A.C. in the following Subsection of 9.48: 9.48.050, 9.48.100, 9.48.110 and 9.48.130A, shall be substituted with the term "Title 25 of the Texas Administrative Code, Chapter 265".

Section 2. That Title 9 (Health and Safety), Chapter 9.48 (Public Swimming Pools and Spas), Section 9.48.030 (License required), Subsection B. of the City Code be amended as follows:

9.48.030 License required.

B. No person shall build, construct, alter or modify a public swimming pool or public spa without first obtaining a permit from the development services department in accordance with the requirements of City Code Chapter 18.02 (Building and Construction Administrative Code). Drawings submitted to obtain such a permit shall be subject to the approval of the director of the development services department.

Section 3. That Title 9 (Health and Safety), Chapter 9.48 (Public Swimming Pools and Spas), Section 9.48.040 (Definitions), Subsections B., H., L. and O. of the City Code be deleted and that the remaining Subsections be renumbered accordingly, and that Subsection Z. of the City Code be amended as follows:

9.48.040 Definitions.

Z. "Water sample" means a portion of water taken from a pool or spa to determine the quality.

Section 4. That Title 9 (Health and Safety), Chapter 9.48 (Public Swimming Pools and Spas), Section 9.48.110 (Recirculation system) of the City Code be amended as follows:

9.48.110 Recirculation system.

The recirculation system disinfecting equipment for public swimming pools and public spas shall be securely anchored to prevent the accidental spilling of chemicals and shall be equipped with a flow meter. In addition, public pools and spas shall comply with Title 25 of the Texas Administrative Code, Chapter 265.

Section 5. That Title 9 (Health and Safety), Chapter 9.48 (Public Swimming Pools and Spas), Section 9.48.120 (Water testing), Subsections A. and C. of the City Code be amended as follows:

9.48.120 Water testing.

A. Every public swimming pool or public spa shall be inspected and tested at least once annually by the director. The licensee of the public swimming pool or public spa shall cooperate fully with the director in performing such reviews and testing.

C. Public swimming pools or public spas whose pH levels or free chlorine levels are outside the acceptable limits defined in Section 9.48.150 shall be closed in accordance with Section 9.48.250. Such closed facilities shall not be reopened without the approval of the director.

Section 6. That Title 9 (Health and Safety), Chapter 9.48 (Public Swimming Pools and Spas), Section 9.48.130 (Safety equipment), Subsections C. and E. of the City Code be amended as follows:

9.48.130 Safety equipment.

C. At public swimming pools and public spas, a sign with clearly legible letters at least four inches high shall be placed in plain view within the pool enclosure and shall read "In Case of Emergency – Call 911". The sign must indicate the location of the nearest accessible telephone. An operating phone must be located within 200 feet of the pool or spa.

E. Public swimming pools and public spas shall maintain permanent signs with clearly legible letters posted in plain view within the pool or spa enclosure showing the following:

1. The hours during which the public swimming pool or public spa is open for use.
2. For Class C and Class D pools where no lifeguard is provided, a sign shall be placed in plain view and shall state "NO DIVING" along with an international warning symbol for no diving. The letters "NO DIVING" and the symbol shall be at least four inches high.
3. For pools where no lifeguard service is required, a warning sign shall be placed in plain view and shall state "WARNING – NO LIFEGUARD ON DUTY" with clearly legible letters at least four inches high. In addition, the sign shall also state in letters at least two inches high "CHILDREN SHOULD NOT USE POOL WITHOUT ADULT SUPERVISION".
4. The rules and regulations related to the facility.

Section 7. That Title 9 (Health and Safety), Chapter 9.48 (Public Swimming Pools and Spas), Section 9.48.140 (Supervision of minors), Subsection A. of the City Code be amended as follows:

9.48.140 Supervision of minors.

A. Regardless of whether a public pool or public spa is under the supervision of a lifeguard (as defined in Section 9.48.040 of this code), a parent, guardian or person having supervision, care, custody or control of a minor(s), twelve years of age or under, must accompany the minor(s) and keep the minor(s) within view while the minor(s) is/are swimming or attempting to swim.

Section 8.

That Title 9 (Health and Safety), Chapter 9.48 (Public Swimming Pools and Spas), Section 9.48.150 (Inspection), Subsections A. and D. be amended and Subsection E be added as follows:

9.48.150 Inspection.

A. The director, or designated representative, may enter any facility at reasonable times to inspect, enforce or investigate any unsafe condition or violation, or to perform any duty imposed under this chapter or chapter 5.32. The inspection may be conducted regardless of whether a previous inspection revealed compliance. If such facility is occupied, the director shall first present proper credentials and request entry permission. If unoccupied, the director shall make an effort to locate the owner or other person responsible for the premises to request entry permission.

D. For public swimming pools or public spas in violation of this chapter, the director of the department of environmental services shall issue a correction notice to the owner or operator regarding the violation(s). The owner or operator receiving a correction notice

shall promptly remedy the violation, ask for a re-inspection by the director of the department of environmental services, and pay the re-inspection fee identified in the adopted budget resolution for the current fiscal year or other appropriately adopted resolution by the City Council.

1. For public swimming pools or public spas that are applying for a business license or a renewal license, a license shall not be issued or renewed and the facility shall not be used until the violation(s) have been satisfactorily corrected and approved by the director of the department of environmental services and all fees have been paid.

2. A re-inspection fee shall be paid for each re-inspection performed by the director of the department of environmental services. Such fees shall be paid prior to the scheduled date of re-inspection.

E. The director shall provide written notice or copy of the inspection report to the owner or person in charge of the public swimming pool or public spa when a violation of any provision of this chapter is determined. Such notice or report shall include:

1. Name and address of the pool or spa;
2. Description of each violation; and
3. A specific, reasonable time period for correction of each violation as defined by the following categories:

a. Category A Violation – 24 hours to remedy violation

- i. The water clarity is such that a five inch diameter black circle on a white field cannot be seen at the deepest part of the public swimming pool or public spa.
- ii. The pH in a public swimming pool or public spa is less than seven or greater than seven and eight tenths.
- iii. The free available chlorine (residual) in a public swimming pool is less than one part per million (ppm) or greater than eight ppm; or the free available

chlorine (residual) in a public spa is less than two ppm or greater than eight ppm.

- iv. The public spa temperature is greater than one hundred four degrees Fahrenheit.
- v. The public swimming pool temperature is greater than ninety-eight degrees Fahrenheit.
- vi. The suction outlet or main drain suction cover of a public swimming pool or public spa is missing, loose or broken.
- vii. The safety vacuum release system, automatic pump shutoff system, and/or anti-entrapment devices are missing or non-operational.

b. Category B Violation – 7 calendar days to remedy violation

- i. Missing or non-functional safety equipment.
- ii. Failure to comply with depth marker requirements.
- iii. Failure to maintain proper documentation or daily log.
- iv. Inadequate or improper signage.

c. Category C Violation – 30 calendar days to remedy violation

- i. Failure to comply with enclosure requirements.
- ii. Failure to comply with water and sewer system requirements.
- iii. Failure to comply with electrical requirements.
- iv. Failure to comply with mechanical ventilation requirements.
- v. Failure to provide an operating phone located within 200 feet of pool or spa.

4. A statement that the license is subject to suspension or revocation and that legal action may be taken for failure to comply with the notice;

5. A statement that the person receiving the notice may appeal by following the procedures provided in this chapter.

Section 9.

That Title 9 (Health and Safety), Chapter 9.48 (Public Swimming Pools and Spas), Section 9.48.250 (Closure by director), Subsections A. and C. of the City Code be amended and Subsections D., E., and F. be added as follows:

9.48.250 Suspension of licenses and closure by director.

A. The director of the department of environmental services may order the immediate closure and suspend the license of a public swimming pool or public spa when any one of the following conditions exists:

1. Category A violation, as identified in this chapter; or
2. The public swimming pool or public spa does not have a current valid license;
or
3. A violation not appearing on this list but appearing elsewhere in this chapter regarding public pool or spa health and safety and which has not been corrected within the number of days indicated on a written notice of violation.

C. The director of the department of environmental services shall post the facility with a suspended license with the following sign at each entrance to the facility and in a prominent location within the pool/spa area:

POOL/SPA CLOSED BY ORDER OF THE CITY OF EL PASO DEPARTMENT OF ENVIRONMENTAL SERVICES--NO SWIMMING--VIOLATIONS ARE SUBJECT TO PROSECUTION UNDER SECTION 9.48.260 OF THE EL PASO CITY CODE.

D. A facility whose license has been suspended shall immediately cease further use until the owner or operator has satisfactorily corrected the violation(s) or condition(s), has passed inspection by the director of the department of environmental services and has been authorized in writing by the director of the department of environmental services that the license has been reinstated and that normal operations may resume.

E. The director of the department of environmental services shall notify the director of the development services department or his designee of all suspensions and reinstatements of licenses.

F. The pool owner or operator whose license is suspended shall contact the director of the department of environmental services and request a re-inspection. After successfully passing the re-inspection as set forth in this chapter and after paying the appropriate re-inspection fee as identified in the adopted budget resolution for the current fiscal year or other appropriately adopted resolution by City Council, a closed public swimming pool or public spa may be reopened.

Section 10. That Title 9 (Health and Safety), Chapter 9.48 (Public Swimming Pools and Spas), Section 9.48.255 (Revocation of License) of the City Code be added as follows:

9.48.255 Revocation of licenses and closure by director.

A. The director may order the immediate closure and revoke the license of a public swimming pool or spa when any one of the following conditions exists:

1. A public swimming pool or public spa continues to be open for business while its license is suspended;
2. An owner or operator or any employee of a public swimming pool or public spa has interfered with the director of the department of environmental services in the performance of official duties; or
3. The license for a public swimming pool or spa has been suspended for a health or safety issue within the preceding twelve calendar months and there is a failure to correct, within the time allotted, a hazard to public health or safety that was set out as a reason for most recent notice of suspension of the license.

B. The director of the department of environmental services shall post the facility with a revoked license with the following sign at each entrance to the facility and in a prominent location within the pool/spa area:

POOL/SPA CLOSED BY ORDER OF THE CITY OF EL PASO DEPARTMENT OF ENVIRONMENTAL SERVICES--NO SWIMMING--VIOLATIONS ARE SUBJECT TO PROSECUTION UNDER SECTION 9.48.260 OF THE EL PASO CITY CODE.

C. A facility whose license has been revoked shall immediately cease further use until the owner or operator has secured a new license or the revocation is reinstated through an appeal.

D. The director of the department of environmental services shall notify the director of the development services department or his designee of all revocations and reinstatements of licenses.

E. After a six month period from the date of revocation a public swimming pool or public spa with a revoked license may only be reopened after completing a new application and paying the appropriate application fee as identified in the adopted budget resolution for the current fiscal year or other appropriately adopted resolution by City Council, and successfully passing the inspection, and as further described in Chapter 5.32 of the City Code.

Section 11. That Title 9 (Health and Safety), Chapter 9.48 (Public Swimming Pools and Spas), Section 9.48.270 (Appeals) of the City Code be added as follows:

9.48.270 Appeals.

A. The owner or operator of the licensed public swimming pool or public spa that has been served with a suspension or revocation notice or that has been denied the issuance or renewal of a business license, may appeal the action of the director of the department of environmental services to the city manager. The owner or operator shall

prepare a written appeal providing justification as to how the facility is in compliance with the City Code. Within ten business days of receipt of the written appeal from the owner or operator, the director of the department of environmental services shall prepare a report indicating the reasons for the suspension or revocation or the license denial, and shall provide a copy to the owner or operator. Such director's decision is final unless within ten calendar days from the date of receiving such director's report, the owner or operator files with the city clerk a written appeal to the city manager specifying reasons for the appeal. Said appeal shall also include a written rebuttal to such director's report.

B. The city manager or his designated deputy city manager shall review the report of the director of the department of environmental services and the appellant's rebuttal. The city manager or designee may allow the appellant to make an oral presentation or submit additional rebuttal. The city manager or designee shall make a ruling on the appeal within a reasonable period of time after the appeal has been filed.

C. The city manager or designee shall sustain, reverse or modify the action of the director of the department of environmental services and shall notify the appellant of his decision in writing. The decision of the city manager or designee is final.

Section 12. Except as expressly herein amended, Title 9 (Health and Safety), Chapter 9.48 (Public Swimming Pools and Spas) of the El Paso City Code shall remain in full force and effect.

(signatures appear on the following page)

ADOPTED THIS ____ DAY OF _____, 2010.

THE CITY OF EL PASO:

ATTEST:

John F. Cook, Mayor

Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Josette Flores
Assistant City Attorney

Ellen A. Smyth, P.E., Director
Environmental Services Department